

## **REMARKS**

In response to the Final Office Action mailed February 3, 2010 (hereinafter "Office Action")<sup>1</sup>, the response for which is due May 3, 2010, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

### **I. Status and Disposition of Claims**

In the instant application, claims 1-6, 8-14, and 27-30 are pending. Claims 7 and 15-17 are canceled. Claims 18-26 are withdrawn. Of these pending claims, claims 1, 9, 27, and 29 are independent.

In the Office Action, claims 1-8, 8-14, and 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Phelan et al. (US 2004/0093296 - hereinafter "*Phelan*") in view of the June 1999 David Haigh publication "Understanding the Financial Value of Brands" ("*Haigh*") and passages from the 2002 book written by Debashis Pati entitled "Marketing Research" ("*Pati*"). See Office Action at pages 4-7.

### **II. Amendments**

In response to the Office Action, Applicant amends claims 1-5, 9, 13-14, and 27-30. The amendments improve readability. Upon entry of the amendments, claims 1-6, 8-14, and 27-30 will be pending in this application.

Support for the claim amendments may be found, among other places, in the Specification at paragraphs [0031] - [0033].

### **III. Response to Rejections**

Based on the reasoning presented below, Applicant respectfully traverses the rejection of claims 1-6, 8-14, and 27-28 under 35 U.S.C. § 103(a) as allegedly being obvious over *Phelan* in view of *Haigh* and *Pati*, and requests the withdrawal of the

---

<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

rejection, reconsideration of the application, and the timely allowance of the pending claims.

Applicant respectfully traverses the rejection of under 35 U.S.C. §103(a) because a *prima facie* case of obviousness has not been established. "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." MPEP § 2142, 8th Ed., Rev. 7 (July 2008) (internal citation and inner quotation omitted). "[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." MPEP § 2141(II). In rejecting a claim, "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." MPEP § 2141(III).

**Claims 1-6, 8, and 27-30**

The rejection of claim 1, and related dependent claims 2-6 and 8, related claims 27 and 29, and related dependent claims 28 and 30 should be withdrawn. Claim 1 calls for a combination including, for example,

- "distinct software modules . . . comprising a brand pyramid conversion analysis tool module [and] an image/equity analysis tool module for determining tier-specific brand image factors that drive the population of customers to be associated with a selected tier of a selected multi-tier brand pyramid";
- "executing a second tier-specific analysis of the first tier of the multi-tier brand pyramid. . . from the data related to the population of customers in the first tier of the multi-tier brand pyramid";
- "determining, by the regression analysis tool module, the tier-specific brand loyalty or brand image factors related to the first tier and information about the tier-specific brand loyalty or brand image factors"; and
- "identifying and quantifying the tier-specific brand development opportunities . . . comprising opportunities for increasing attitudinal and behavioral loyalty among the population of the customers associated with the first tier."

The Office Action conceded that *Phelan* fails to teach or suggest “an image/equity [and] customized brand pyramid . . . modules.” Office Action at 6. The Office Action alleged that *Haigh* teaches “a brand pyramid tool, citing *Haigh* pages 37-39.

*Haigh* discloses, “The importance of having a validated, respondent-based measure is to explain why some consumers are more valuable than others. This is done via . . . a Brand Pyramid.” *Haigh* at 37. *Haigh* discloses using a brand pyramid as “the starting point for the analysis of the brand’s strengths and weaknesses. “ *Haigh* at 38. It discloses using “a profiling technique at the category level [which compares] the conversion from each level up the pyramid **with the other brands in the category.**” *Haigh* at 39, emphasis added.

Therefore, *Haigh* simply compares one brand’s conversion rate to other brands’ conversion rates. *Haigh* discloses that “a brand’s conversion profile does provide a measure of [a brand’s] **relative** strength and weaknesses.” *Haigh* at 40, emphasis added. Thus, *Haigh*’s analysis is in **comparison to other brands**. Whereas *Haigh* relies on brand comparisons, claim 1 recites analysis of a **single** brand pyramid.

Therefore, *Haigh* does not disclose

- “executing a first analysis by the first analysis tool module to **analyze a population of customers in a first tier of a multi-tier brand pyramid**”;
- “executing a second tier-specific **analysis of the first tier of the multi-tier brand pyramid** by the second analysis tool module **from the data related to the population of customers in the first tier**”;

as recited in amended claim 1 (emphasis added).

In addition, *Haigh* discloses brand comparisons but does not disclose:

- “**determining**, by the regression analysis tool module, the **tier-specific brand loyalty or brand image factors related to the first tier**”; and
- “**identifying and quantifying the tier-specific brand development opportunities . . . comprising opportunities for increasing attitudinal and behavioral loyalty among the population of the customers associated with the first tier**”;

as recited in amended claim 1, emphasis added.

The Office Action cited *Pati* as a teaching of “the output and display of image perceptual maps of brand factors.” Office Action at 7. Even assuming the Examiner's characterization of *Pati* is correct, which Applicant does not concede, *Pati* fail to cure the deficiencies of both *Haigh* and *Phelan*, discussed above. That is, *Pati*, also, fail to teach or suggest “executing a second **tier-specific analysis**. . . from the data related to the population of customers in the first tier”; “determining, by the regression analysis tool module, the **tier-specific brand loyalty or brand image factors related to the first tier and information about the tier-specific brand loyalty or brand image factors**”; and “**identifying and quantifying the tier-specific brand development opportunities** . . . comprising opportunities for increasing attitudinal and behavioral loyalty among the population of the customers associated with the first tier,” as recited in claim 1 (emphasis added).

In view of the mischaracterization of the prior art set forth above, the Office Action has neither properly determined the scope and content of the prior art nor ascertained the differences between claim 1 and the prior art. Moreover, the Office Action has provided no motivation for one of ordinary skill in the art to modify the teachings of the prior art to achieve claim 1. Accordingly, no reason has been articulated as to why one of skill in the art would find claim 1 obvious in view of the prior art. For at least this reason, no *prima facie* case of obviousness has been established. The rejection of claim 1 under 35 U.S.C. §103 as being obvious from *Phelan* in view of *Haigh* and *Pati* is thus improper and should be withdrawn.

In addition, independent claims 27 and 29, although different in scope from claim 1, recite elements similar to claim 1 and were rejected for similar reasons. See Office Action at 4-7. For at least the reasons stated above with respect to claim 1, claims 27 and 29, are also allowable. Finally, dependent claims 2-6, 28, and 30, depending respectively from claims 1, 27, and 29, are also allowable.

**Claims 9-14**

The rejection of claim 9 and related dependent claims 10-14 should be withdrawn. Claim 9 calls for a combination including, for example,

- “determining, by the image/equity analysis tool module and with data associated with the customers who have converted from the first tier to the second tier, the tier-specific brand image factors driving why the customers move from the first tier to the second tier”;
- “outputting a display of an image perceptual map on the display device, the display of the image perceptual map showing an extent of and basis for brand differentiation based on the tier-specific brand image factors associated with the customers who have converted from the first tier to the second tier”; and
- “quantifying tier-specific brand development opportunities associated with the tier-specific brand image factors based on the display of the image perceptual map.”

As noted above, *Haigh* discloses using “a profiling technique at the category level [which compares] the conversion from each level up the pyramid **with the other brands in the category.**” *Haigh* at 39, emphasis added. However, this comparison of conversion rates of one brand with other brands does not disclose “determining . . . with data associated with the customers who have converted from the first tier to the second tier, **the tier-specific brand image factors driving why the customers move from the first tier to the second tier,**” as recited in amended claim 9 (emphasis added). Further, *Haigh* does not disclose ;

- “outputting a display of an image perceptual map on the display device, the display of the image perceptual map showing an extent of and basis for brand differentiation based on the tier-specific brand image factors associated with the customers who have converted from the first tier to the second tier”; and
- “quantifying tier-specific brand development opportunities associated with the tier-specific brand image factors based on the display of the image perceptual map.”, the **tier-specific brand loyalty or brand image factors related to the first tier** and information about the tier-specific brand loyalty or brand image factors”; and
- “**identifying and quantifying the tier-specific brand development opportunities . . . comprising opportunities for increasing attitudinal and behavioral loyalty among the population of the customers associated with the first tier,**”

as also recited in amended claim 9 (emphasis added).

The Office Action cited *Pati* as a teaching of “the output and display of image perceptual maps of brand factors.” Office Action at 7. Even assuming the Examiner's characterization of *Pati* is correct, which Applicant does not concede, *Pati* fail to cure the deficiencies of both *Haigh* and *Phelan*, discussed above. That is, *Pati*, also, fail to teach or suggest “determining . . . with data associated with the customers who have converted from the first tier to the second tier, **the tier-specific brand image factors driving why the customers move from the first tier to the second tier,**” as recited in amended claim 9 (emphasis added).

In view of the mischaracterization of the prior art set forth above, the Office Action has neither properly determined the scope and content of the prior art nor ascertained the differences between claim 9 and the prior art. Moreover, the Office Action has provided no motivation for one of ordinary skill in the art to modify the teachings of the prior art to achieve claim 9. Accordingly, no reason has been articulated as to why one of skill in the art would find claim 9 obvious in view of the prior art. For at least this reason, no *prima facie* case of obviousness has been established. The rejection of claim 9, under 35 U.S.C. §103 as being obvious from *Phelan* in view of *Haigh* and *Pati* is improper and should be withdrawn. In addition, the rejection of claims 10-14 as depending from claim 9 and dependent claims 10-14 is also improper and should be withdrawn.

In view of the above, Applicant respectfully requests the withdrawal of the rejection of claims 1-6, 8-14, and 27-28 under 35 U.S.C. § 103(a).

#### IV. Conclusion

In view of the foregoing amendments and remarks, Applicant submits that the subject matter of the claims, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 28, 2010

By: 

Maura K. Moran  
Reg. No. 31,859  
(617) 452-1657